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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,044	06/26/2001	Dale F. McIntyre	83011F-P	1735

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EXAMINER

COULTER, KENNETH R

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/892,044	<b>Applicant(s)</b> MCINTYRE ET AL.	
	<b>Examiner</b> Kenneth R. Coulter	<b>Art Unit</b> 2141	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/28/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 9/28/04 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document (Scholl reference); each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Niamir (U.S. Pat. Pub. No. 2002/0027567) (Listing Network for Classified Information).

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3.1 Regarding claim 1, Niamir discloses a system for managing access to digital images stored on a user computer, comprising:

a server for allowing controlled access to a digital image file on an image stored on a user computer, said server having a communication system capable of communicating with a plurality of user computers, at least one of said user computers having at least one digital image file, said server having pre-authorization for automatic access to said at least one digital image file on said user computer and for permitting access to said at least one digital image file at said server by a third party, said server monitoring access to said digital image file by said third party whenever access by said third party to said digital image file is done without any further authorization by said user computer (Abstract "peer-to-peer computer network"; Figs. 1, 2, 5; paragraph 99; paragraph 57 (see below)).

Optionally system 10 comprises one or more authentication servers 64 (FIG. 1) connected to network 14. Authentication servers 64 may comprise software hosted on the same computers that are hosting CSS software 50. Authentication servers 64 receive user ID and password from authorized users of system 10 (or otherwise authenticate the users) and respond with an **authentication message**. Users who are authenticated can then have their listings 30 synchronized with and saved at a CSS 16 from where they can be retrieved by other users of system 10 for searching. A user may have an account on an authentication server 64 such that by logging on to the **authentication server** (for example by entering a username and password) the user can authenticate himself/herself. (paragraph 99).

System 10 operates as follows. Over time, users of user computer systems 12 invoke LLS 18 to generate listings 30. Listings 30 are initially stored in a database 20 on the user computer system 12 from which

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the listing originated. Each LLS 18 uploads identifying information about its locally stored listings 30 to one or more of CSSs 16. Each listing may include one or more file attachments 30A. File attachments may include, for example, **picture files**, detailed descriptions, menus, audio or video files or the like. Large file attachments 30A are typically not uploaded to CSS 16. Upon receipt of a new listing 30, CSS 16 stores the listing in database 54 and indexes the listing 30, as appropriate. (paragraph 57).

3.2 Per claim 2, Niamir teaches a system according to claim 1 wherein said at least one digital image file includes an electronic address for identifying that said at least one digital image came from said user computer (Abstract; Figs. 2, 5; paragraph 99).

3.3 Regarding claim 3, Niamir discloses a system according to claim 1 wherein said third party pays an access fee for use and/or down loading of said image of said user image file from said server (p. 8, paragraphs 103, 104, 105, 106, 107 (see below)).

By way of example, a first user might post a listing offering a collectable item for sale for a certain price. A second user might conduct a search and locate the listing. The second user wants to purchase the item and activates the acceptance control on the second user's user interface. The second user's local listing server software generates a message to the first user informing the first user that the second user wishes to purchase the item. Optionally the second user may enter a text message to be sent to the first user along with the acceptance. The first user agrees to the purchase by operating the acceptance control provided by the first user's local listing server software (the user interface may provide different controls for sending an indication of acceptance to a first user who posts a listing and to allow the first user to respond to an indication of acceptance by a second user). The first user's local listing server software also sends a message including the address of the second user, the address of the first user and a transaction price to an e-commerce server. E-commerce server 31 generates and sends to the second

user a form requesting from the **second user payment information**. The second user enters, for example, the **second user's credit card information** and operates confirmation control 35. **E-commerce server** 31 validates the credit card transaction and sends a message to the local listing server software of the first user that the **payment** has been processed. The first user can then ship the item to the second user and obtain payment from the operator of the e-commerce server. (paragraph 107).

3.4 Per claim 4, Niamir teaches a system according to claim 3 wherein said service provider assigns a first predetermined **credit** to the account of the user of said user computer, a debit to the account of the third party that downloaded the digital image file from said server, and a second predetermined credit to the service provider (paragraphs 103 – 107 “entering into a trade”).

3.5 Regarding claims 5 and 10, Niamir discloses a system according to claim 1 wherein a report is provided to said user of said user computer regarding access to said digital media file (Abstract; Figs. 2, 5; paragraph 99).

3.6 Per claims 6 – 9, the rejection of claims 1 – 5 and 10 under 35 USC 102(e) (paragraphs 3.1 – 3.5 above) applies fully.

### ***Response to Arguments***

4. Applicant's arguments filed 7/26/05 have been fully considered but they are not persuasive.

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Applicant argues that "in the present invention, there is only one party that has direct access with the user computer, that is the server."

Examiner disagrees.

This feature is not found in any one claim of the present Application.

Applicant argues that "in the present invention the third party never has direct access but can obtain direct access to the actual image files through the server."

Examiner disagrees.

This feature is not found in any one claim of the present Application.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KENNETH R. COULTER  
PRIMARY EXAMINER

krc

